

NANCY K LAYNE  
c/o 95580 South Coos River Lane  
Coos Bay, Oregon  
Plaintiff/Creditor

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:  
RESIDENTIAL CAPITAL, LLC, et al.,  
Debtors.

Case No. 12-12020 (MG)  
Chapter 11  
Claim No. 292

LINTON C. LAYNE  
NANCY K. LAYNE  
Plaintiffs/Creditors  
vs.

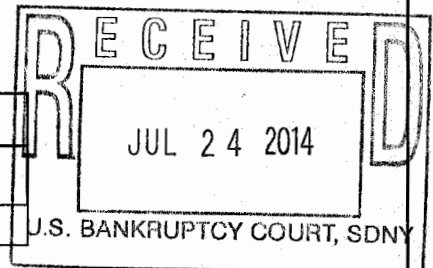
**NOTICE OF OPPOSITION ON RESCAP  
BORROWER CLAIMS TRUST'S  
(NO LIABILITY BORROWER CLAIMS)  
and  
REQUEST FOR SUMMARY JUDGMENT**

GMAC MORTGAGE, LLC;  
RESIDENTIAL CAPITAL, LLC,  
Defendants.

**AFFIDAVIT OF NANCY KAY LAYNE**

Linton C. Layne, Nancy K. Layne

Proposed Claim(s) to be Disallowed and Expunged			
Claim No(s); Date Filed	Debtor	Classification	Amount
292	GMAC Mortgage,	Secured	\$35,200.00



COME NOW the Plaintiffs/Creditors above-named, and hereby file Plaintiffs  
OPPOSITION ON RESCAP BORROWER CLAIMS TRUST'S (NO LIABILITY BORROWER  
CLAIMS) and PLAINTIFFS REQUEST FOR SUMMARY JUDGMENT being in regards  
to provide evidence that the Secured Claim is asserted that Residential Capital, LLC  
nor any subsidiaries' have producing certifiable and verifiable evidences being  
originating documentation or any ownership of Note or Deed of Trust according to  
the Deed of Trust have no standing within the court.

- 1 -

PLAINTIFF'S NOTICE OF OPPOSITION ON RESCAP BORROWER CLAIMS TRUST'S  
(NO LIABILITY BORROWER CLAIMS) AND REQUEST FOR SUMMARY JUDGMENT  
AFFIDAVIT OF NANCY KAY LAYNE

1  
2 The Plaintiff will show that the Original Lender is listed at Washington  
3 County Oregon, Records Office to have some interest in the Security Instrument  
4 and the Note, and yet when the Original Lender was questioned they responded  
5 with they have no interest in the Note or Deed of Trust as they had been paid in full.  
6 Why are there not assignments in Washington County Oregon Records Office  
7 declaring whom the Lender transferred their interest in the Note and Security  
8 Instrument to?  
9

10  
11 Where is a copy of my note that was to be sent to me according to the Deed of  
12 Trust?  
13

14  
15 What is not clear is WHO should be owed monies?  
16

17 The plaintiff is the only party presenting that is a party to the Deed of Trust  
18 in the record of the Washington County Records office.  
19

20  
21 Parties, having been given opportunity to produce documentation, faulting to  
22 produce, accepted payments when their stands no evidence that the parties were  
23 entitled to such payments, which may constitute either by intent or by neglect  
24 variant degrees of fraudulent behavior, including a fraud upon this court through a  
25 collection and claim action, or in the least, offered by deceptive business practices  
26  
27

1 offered in the comparative to either state or federal jurisdictions, thusly unjustly  
2 enriching themselves at the expense of the plaintiff.

3  
4  
5 **FACTS**

6 1] Document # 2006-030002 Deed of Trust executed on March 10, 2006 and  
7 recorded within the county recorders office at Washington County Oregon on  
8 March 15, 2006 with the following parties:

9  
10 GRANTOR; LINTON CECIL LAYNE AND NANCY KAY LAYNE

11 LENDER; SIERRA PACIFIC MORTGAGE COMPANY, INC.

12 TRUSTEE; FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON

13 BENEFICIARY; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

14 See Exhibit A  
15

16  
17 2] Document # 2006-030002 Deed of Trust executed on March 10, 2006, shows  
18 on Paragraph "14. Borrower's Copy. Borrower shall be furnished a conformed copy  
19 of the Note and the Security Instrument at the time of execution of after  
20 recordation hereof". See Exhibit A  
21

22 3] Document # 2006-030002 Deed of Trust executed on March 10, 2006, shows  
23 on Paragraph "12. Notice. Except for any notice required under applicable law to be  
24 given in another manner, (a) any notice to Borrower provided in this security  
25 Instrument shall be given by delivering it or by mailing such notice by certified  
26 mail addressed to Borrower". See Exhibit A  
27

1  
2 4] On May 14, 2012, Thomas Marano of GMAC Mortgage, LLC sent a letter to  
3 the Plaintiffs, announcing the Chapter 11 of Residential Capital, LLC and its  
4 subsidiaries, of which GMAC is one of those. See Exhibit B  
5

6  
7 5] On 12 June 2013, a Verification of Account and Status of Account (UCC 9-  
8 210) was drafted and delivered to James Whittinger, CFO of Residential Capital, at  
9 One Meridian Crossings, Minneapolis, MN 55423 via Certified Mail # 7012 0470  
10 0000 8080 2562. See Exhibit C  
11

12  
13 6] On 12 June 2014, USPS Certificate of Mailing PS 3817 was issued by the  
14 North Bend, Oregon Post Office as verification of Mailing to James Whittinger, CFO  
15 of Residential Capital, at One Meridian Crossings, Minneapolis, MN 55423. See  
16 Exhibit D  
17

18  
19 7] On May 18, 2014 and June 18, 2014 and July 18, 2014, GMAC Mortgage,  
20 LLC issued in USPS regular mail "GMAC Mortgage Account Statement" requesting  
21 amount owed. See Exhibit E  
22

23 8] Document # 2006-030002 Deed of Trust executed on March 10, 2006, shows  
24 on Page 2, Paragraph 2, "TO SECURE the Lender the repayment of the indebtedness  
25 evidenced by Borrower's note dated the same date as this security Instrument,"  
26 See Exhibit A  
27

1  
2 9] There is no evidence in Washington County Oregon where the property is  
3 located, of Chain of Assignments of the Note and Security Instrument from the  
4 Lender Sierra Pacific Mortgage to Homecomings - D Drafting Mtg Pmt, then to  
5 Gmacm Epaybill - Ondemand, then to Gmacm Epaybill PEC1 - Ondemand, then to  
6 Loanservicing Pec1 - Phone Pay, then to Loanservicing - Automatic, all parties  
7 whom received funds, do so with no authority to collect, hence a violation of the  
8 Fair Debt Collection Practices Act.  
9

10  
11 10] Payments were executed electronically via First Tech Credit Union starting  
12 on June 14, 2006 monthly until December 16, 2008. See Exhibit F  
13

Date	Amount	Name of Payee
06/14/06	252.18	Homecomings - D Drafting Mtg Pmt
07/14/06	252.18	Homecomings - D Drafting Mtg Pmt
08/29/06	252.18	Gmacm Epaybill - Ondemand
09/11/06	252.18	Gmacm Epaybill - Ondemand
10/17/06	252.18	Gmacm Epaybill - Ondemand
11/14/06	252.18	Gmacm Epaybill PEC1 - Ondemand
12/18/06	252.18	Loanservicing Pec1 - Phone Pay
01/17/07	252.18	Loanservicing Pec1 - Automatic
02/14/07	252.18	Loanservicing - Automatic
03/14/07	252.18	Loanservicing - Automatic
04/16/07	252.18	Loanservicing - Automatic
05/15/07	252.18	Loanservicing - Automatic
06/14/07	252.18	Loanservicing - Automatic
07/16/07	252.18	Loanservicing - Automatic
08/14/07	252.18	Loanservicing - Automatic
09/14/07	252.18	Loanservicing - Automatic
10/16/07	252.18	Loanservicing - Automatic
11/14/07	252.18	Loanservicing - Automatic
12/14/07	252.18	Loanservicing - Automatic
01/15/08	252.18	Loanservicing - Automatic

02/14/08	252.18	Loanservicing - Automatic
03/14/08	252.18	Loanservicing - Automatic
04/15/08	252.18	Loanservicing - Automatic
05/14/08	252.18	Loanservicing - Automatic
06/16/08	252.18	Loanservicing - Automatic
07/15/08	252.18	Loanservicing - Automatic
08/14/08	252.18	Loanservicing - Automatic
09/16/08	252.18	Loanservicing - Automatic
10/15/08	252.18	Loanservicing - Automatic
11/14/08	252.18	Loanservicing - Automatic
12/16/08	252.18	Loanservicing - Automatic
<b>TOTAL</b>	<b>7817.58</b>	<b>Paid to Defendants interests</b>

11] There is no evidence that the Note with the Security Instrument exists and has not been paid in full.

### **LEGAL ARGUMENT**

#### **Conditions Precedent**

OREGON Revised Statutes § 90.130, Obligation of good faith, Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

#### **Statutes of Frauds**

Oregon's recording laws. See, e.g., ORS 86.735(1) (requiring trust deeds, assignments of trust deeds, and appointments of successor trustees to be recorded in appropriate county mortgage records). Like every other state, Oregon has

1 enacted recording statutes that govern priorities with respect to interests in real  
2 property. Those statutes generally serve two related purposes: They protect bona  
3 fide purchasers who acquire interests in real property for consideration and  
4 without notice of prior interests. E.g., ORS 93.640 ("Every conveyance, deed, land  
5 sale contract, assignment of all or any portion of a seller's or purchaser's interest in  
6 a land sale contract or other agreement or memorandum thereof affecting the title  
7 of real property within this state [including mortgages and trust deeds] which is  
8 not recorded as provided by law is void as against any subsequent purchaser in  
9 good faith and for a valuable consideration of the same real property \* \* \*").  
10  
11

12 ORS 86.060 ("Mortgages may be assigned by an instrument in writing, executed  
13 and acknowledged with the same formality as required in deeds and mortgages of  
14 real property, and recorded in the records of mortgages of the county where the  
15 land is situated."); ORS 205.130(2)(a) (county clerk shall record all "[d]eeds and  
16 mortgages of real property, powers of attorney and contracts affecting the title to  
17 real property, authorized by law to be recorded, assignments thereof and of any  
18 interest therein when properly acknowledged or proved and other interests  
19 affecting the title to real property required or permitted by law to be recorded");  
20  
21 see generally *Barringer v. Loder*, 47 Or 223, 81 P 778 (1905) (explaining history of  
22 statutes regarding recording of mortgage assignments). Recording an assignment  
23 of a mortgage is not (and never has been) necessary under Oregon law to transfer a  
24 beneficial interest in the security instrument. Rather, by recording the assignment,  
25  
26 the assignee gains a measure of protection against subsequent purchasers who are  
27  
28

1 not otherwise aware of the assignment. See *Willamette Col. & Credit Serv. v. Gray*,  
2 157 Or 77, 83, 70 P.2d 39 (1937) ("It may be conceded that respondent was not  
3 obliged to take a written assignment and record it in order to acquire title as  
4 between the immediate parties, but we think it was required to do so in order to  
5 maintain its lien as against an innocent purchaser"). The recorded assignment also  
6 protects the assignee in the event that the original mortgagor and mortgagee enter  
7 into a purported discharge of the mortgage after the assignment. See ORS 86.110;  
8 ORS 86.120.  
9

#### 10 11 **Standing at Inception**

12 There is no note and security instrument that has been provided evidencing any  
13 debt that may be owed to the Defendant. Defendants have not filed a verified  
14 Complaint based on that Note, see *Feltus v. U.S. Bank. N.A.*, 80 So. 3d 375 (Fla. 2d DCA  
15 2012)  
16

#### 17 **Unjust Enrichment**

18  
19 Defendants, having opportunity to produce documentation, failing to produce, accepted  
20 payments when their stands no evidence the multiple parties were entitled to such  
21 payments, which may constitute either by intent or by neglect variant degrees of  
22 fraudulent behavior, including a fraud upon this court through a collection and claim  
23 action, or in the least, offered by deceptive business practices offered in the comparative  
24 to either state or federal jurisdictions, thusly unjustly enriching themselves at the  
25 expense of the plaintiff.  
26  
27  
28



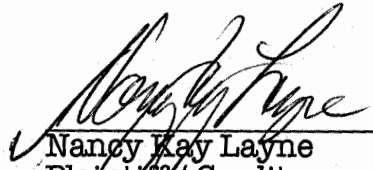
1  
2  
3 **Memorandum in Support of Summary Judgment**

4 Summary Judgment is appropriate when there are no material facts in dispute, and the  
5 moving party is entitled as a matter of law. Volusia County v. Aberdeen at Ormand Beach  
6 L.P. 760 So. 2d 126, 130 (Fla. 2000). There are no disputed facts here.

7 **WHEREFORE**, Plaintiffs pray that this Court enter an order that:

- 8 A. As no evidence exists of authenticated nor validated Chain of Title, Sierra  
9 Pacific Mortgage made no claim of monies owed, the court orders the  
10 Document # 2006-030002 Deed of Trust executed on March 10, 2006 and  
11 recorded within the county recorders office at Washington County Oregon on  
12 March 15, 2006 as satisfied.  
13  
14 B. Provide adequate relief for the violations of the fair debt collection practices act.  
15 C. Return of funds paid to all parties not eligible to receive payments.  
16 D. This case shall be closed with prejudice.

17 DATED: July 22, 2014

18   
Nancy Kay Layne  
19 Plaintiff/Creditor

20   
21

1 In re:  
2 RESIDENTIAL CAPITAL, LLC, et al.,  
3 Debtors.

) Case No. 12-12020 (MG)  
Chapter 11  
Claim No. 292

**AFFIDAVIT OF NANCY KAY LAYNE**

4 LINTON C. LAYNE  
5 NANCY K. LAYNE  
6 Plaintiffs/Creditors

7 vs.

8 GMAC MORTGAGE, LLC;  
9 RESIDENTIAL CAPITAL, LLC,  
10 Defendants.

11 I, [AFFIANT], being first duly sworn, say:

- 12 1) I make this affidavit in support of PLAINTIFFS motion for summary  
13 judgment. All facts and statements contained in this affidavit are within my  
14 own personal knowledge. If called as a witness at trial, I could testify to all  
15 matters referred to here.
- 16 2) There is no evidence that Document # 2006-030002 Deed of Trust executed  
17 on March 10, 2006 is recorded within the county recorders office at  
18 Washington County Oregon on March 15, 2006 exists, and affiant believes  
19 no evidence to the contrary exists.
- 20 3) There is no evidence that Linton Cecil Layne and or Nancy Kay Layne  
21 received a conformed copy of the Note and the Security Instrument  
22 according to paragraph 14 in the Deed of Trust, and affiant believe no such  
23 evidence exists.
- 24 4) There is no evidence that a letter claiming to be from Thomas Marano of  
25 GMAC Mortgage, LLC did not announce to the Plaintiffs of the Chapter 11 of  
26  
27  
28

1 Residential Capital, LLC; and the affiant believe that no evidence to the  
2 contract exists.

- 3 5) There is no evidence that a Verification of Account and Status of Account  
4 was not sent to James Whittinger, on June 12, 2013; and affiant believes  
5 that no evidence to the contrary exists.  
6  
7 6) There is no evidence that would secure the Lender's repayment of  
8 indebtedness by Borrower's note dated the same date as the security  
9 instrument; and the affiant believe that no such evidence exists.  
10  
11 7) There is no evidence of a New Lender or an assignment of Lender per the  
12 Deed of Trust; and affiant believes that no such evidence exists.  
13  
14 8) There is no evidence of a NOTICE to the Borrowers as to Changes to the  
15 Lender or the assigns via delivery or Certified Mail; and affiant believe that  
16 no such evidence exists.  
17  
18 9) There is no evidence that the Lender; Sierra Pacific Mortgage made any  
19 assignment to Homecomings - D Drafting Mtg Pmt; and Homecomings - D  
20 Drafting Mtg Pmt to Gmacm Epaybill - Ondemand; and Gmacm Epaybill -  
21 Ondemand to Gmacm Epaybill PEC1 - Ondemand; and Gmacm Epaybill  
22 PEC1 - Ondemand to Loanservicing Pec1 - Phone Pay; and Loanservicing  
23 Pec1 - Phone Pay to Loanservicing - Automatic; that exist in the Washington  
24 County Oregon Records Office where all interest in land records are  
25 recorded; and affiant believe that no such evidence exists.  
26  
27  
28

1 10) There is no evidence that payments were not made to Homecomings - D  
2 Drafting Mtg Pmt, then to Gmacm Epaybill - Ondemand, then to Gmacm  
3 Epaybill PEC1 - Ondemand, then to Loanservicing Pec1 - Phone Pay, then  
4 to Loanservicing - Automatic; and affiant believes that no evidence to the  
5 contrary exists.  
6

7 11) There is no evidence that the original unaltered Note with the Security  
8 Instrument exists within the same ownership; the affiant believes that no  
9 evidence to the contrary can be found.  
10

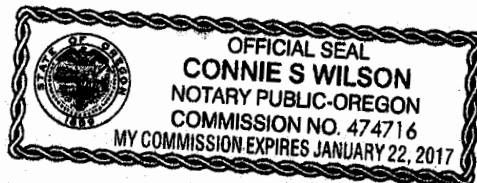
11 12) There is no evidence of Defendants having rights to collect and enriching  
12 themselves at the Plaintiffs expense; and affiant believes that no evidence to  
13 the contrary exists.  
14

15  
16  
17   
18 NANCY KAY LAYNE  
[AFFIANT]

19 SUBSCRIBED AND SWORN TO before me on 22 JULY 2014.

20  
21 Notary Public for Oregon

22 My commission expires Jan. 22, 2017



**ORDER**

In re: Case No. 12-12020 (MG)  
RESIDENTIAL CAPITAL, LLC, et al., Chapter 11  
Debtors. Claim No. 292

**[PROPOSED] ORDER**

LINTON C. LAYNE  
NANCY K. LAYNE  
Plaintiffs/Creditors  
vs.

GMAC MORTGAGE, LLC;  
RESIDENTIAL CAPITAL, LLC,  
Defendants.

After this matter being heard, IT IS HEREBY ORDERED THAT:

1] As no evidence exists of authenticated or verified Chain of Title, Sierra Pacific Mortgage made no claim of monies owed, the court orders the Document # 2006-030002 Deed of Trust executed on March 10, 2006 and recorded within the county recorders office at Washington County Oregon on March 15, 2006 as satisfied.

2] Provide adequate relief for the violations of the fair debt collection practices act.

3] Return of funds paid to all parties not eligible to receive payments.

4] This case shall be closed with prejudice.

IT IS SO ORDERED.

DATE \_\_\_\_ of \_\_\_\_ 2014.

1 In re:  
2 RESIDENTIAL CAPITAL, LLC, et al.,  
3 Debtors.

Case No. 12-12020 (MG)  
Chapter 11  
Claim No. 292

**PROOF OF SERVICE**

4 LINTON C. LAYNE  
5 NANCY K. LAYNE  
6 Plaintiffs/Creditors  
7 vs.

8 GMAC MORTGAGE, LLC;  
9 RESIDENTIAL CAPITAL, LLC,  
10 Defendants.

11 Honorable Martin Glenn  
12 United States Bankruptcy Court for the Southern District of New York  
13 Alexander Hamilton Custom House  
14 One Bowling Green  
15 New York, New York 10004-1408  
16 Certified Mail # 7012 0470 0000 8080 2906

17 Attention: Norman S. Rosenbaum and Jordan A. Wishnew  
18 counsel to the ResCap Borrower Claims Trust  
19 Morrison & Foerster LLP  
20 250 West 55th Street  
21 New York, NY 10019  
22 USPS regular mail and Via fax # (212) 468-7900

23 Attention: Linda A. Riffkin and Brian S. Masumoto  
24 Office of the United States Trustee for the Southern District of New York  
25 U.S. Federal Office Building  
26 201 Varick Street, Suite 1006  
27 New York, NY 10014  
28 USPS regular mail and Via fax # 212-668-2255

Attention: Daniel J. Flanigan  
The ResCap Borrower Claims Trust  
Polsinelli PC  
900 Third Avenue  
21st Floor  
New York, NY 10022  
USPS regular mail and Via fax # 212.684.0197

I am a resident of the state of Oregon. I am a competent person 18 years of age or older. I am not an attorney for a party to this case, or an officer, director or employee of any party to this case. On the 22<sup>nd</sup> day of July 2014, I served the above-named parties by delivering to parties a copy of these papers, each of which was a true copy of the original.